



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 584

December 14, 2022

ISSUE

Whether expenditures made by a candidate to encourage donations to a local food bank are political expenditures when publicized by the candidate on a social media page that is also used for his campaign. (AOR 677)

SUMMARY

Yes. Expenditures incurred by a candidate in connection with charitable fundraising are political expenditures if the candidate promotes the activity on his campaign's social media page.

FACTS

The requestor, the mayor of a city in Texas, requests an advisory opinion on whether he may make certain expenditures without violating title 15 of the Election Code, and, if so, whether they must be reported as political expenditures. Specifically, he would like to make an offer on his campaign's Facebook account that involves giving lottery tickets to anyone that donates goods to the local foodbank.

If permitted, the requestor would pay for the lottery tickets out of personal funds, but he would use the same Facebook page he uses to campaign for office to publicize the offer. The Facebook page is not a part of any taxpayer or city system, and no public funds would be used to fund or promote the activity.

ANALYSIS

The requestor's threshold question is whether the described promotion is permitted under title 15. The answer is yes. Officers and employees of political subdivisions are prohibited from "knowingly spend[ing] or authoriz[ing] the spending of public funds for political advertising." Tex. Elec. Code § 255.003(a). But the requestor says no public funds will be spent on the promotion. His plan is to purchase the lottery tickets with personal funds and to publicize the promotion on a Facebook account that is neither controlled nor paid for by public funds. Assuming no city equipment or paid time is used, the activity is not prohibited by section 255.003(a). *See, e.g.* Tex. Ethics Comm'n Op. No. 550 (2019).

Having determined that the requestor may carry out his plan, we consider whether it would implicate any of title 15's reporting or disclosure requirements. Under title 15, candidates must report their political expenditures. *See* Tex. Elec. Code § 254.031(a)(3). Political expenditures

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include both campaign expenditures and officeholder expenditures. *Id.* at § 251.001(10). And campaign expenditures are any expenditure made by any person in connection with a campaign for elective office or on a measure. *Id.* at § 251.001(7).

Here, there appears to be no *direct* benefit to the requestor’s campaign. The candidate is not soliciting donations to his campaign. Instead, he is spending money to solicit donations to a charity. However, the Supreme Court of Texas has determined that the phrase “in connection with” is an expansive term that is satisfied even by “indirect, ‘tenuous,’ or ‘remote’ relationships.” *Cavin v. Abbott*, 545 S.W.3d 47, 70 (Tex. App.—Austin 2017, no pet.) (citing *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 901 (Tex. 2017)); *but see Osterberg v. Peca*, 12 S.W.3d 31, 51 (Tex. 2000) (construing “in connection with a campaign” to mean only expenditures to fund express electoral advocacy in the context of direct campaign expenditures made by a non-candidate).

Furthermore, the Commission has found similar expenditures—which have the indirect benefit of raising the candidate’s profile or standing in the community—are connected with a campaign, even where there is no direct financial benefit to the campaign. *See, e.g.* Tex. Ethics Comm’n Op. No. 102 (1992) (advertisement in third-party publication congratulating a sports team that identifies a candidate or public officer as such is political advertising). Here, the expenditure’s connection to a campaign is even closer than in EAO 102 because the requestor is using his campaign social media to promote the activity. Because the candidate’s expenditures for this promotion are campaign expenditures, they must be reported in accordance with the requirements of title 15.

The post on the candidate’s Facebook page would not require a political advertising disclosure statement provided he does not pay to promote the post and his profile page clearly and conspicuously displays the full name of the candidate. *See* Tex. Elec. Code § 255.001; 1 Tex. Admin. Code § 26.1(c).